

DECISION

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**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-209193**DATE:** March 15, 1983**MATTER OF:** Skyline Credit Corporation**DIGEST:**

IFB requirement for bidders to submit with their bids detailed written procedures as to how they would conduct credit investigations raises issue of responsibility, rather than of responsiveness, since it concerns how bidders would perform rather than whether bidders would perform in conformity with solicitation.

Skyline Credit Corporation, a small business concern, protests the rejection of its bid as nonresponsive by the Veterans Administration under invitation for bids No. M-1-83 and the award of the contract to Walter D. Davis, CPA. The IFB solicited bids to provide consumer type credit reports covering "Individual Current Assets and Income," and required the bidders to submit with their bids a "detailed written procedure as to how street investigations are to be accomplished." Three bids, including Skyline's, were rejected as nonresponsive because of "their failure to submit [adequately] detailed written procedure[s]" with respect to the street investigations. The agency report consists of a copy of the procurement file and a statement that the agency does not "necessarily" agree with the contracting officer's belief that her actions were correct. For the reasons discussed below, this protest is sustained.

The 4 lowest of the 10 bids received were as follows:

Metro Sales Corp.	\$346,987.50
Skyline Credit Corp. (protester)	380,625.00
Bradford Brothers	404,125.00
Walter D. Davis, CPA (awardee)	404,125.00

The bids of Metro, Skyline and Bradford subsequently were rejected as "nonresponsive" because the written procedures which they submitted with their bids were not satisfactory to the contracting officer.

Both Davis and Skyline and, apparently, Metro and Bradford submitted statements describing the procedures they would use to conduct the street investigations required by the contract if the contractor could not obtain the needed information through standard procedures. Neither the IFB nor the agency in its report explains the purpose of the requirement for bidders to submit their written procedures for street investigations or why these statements were needed in view of the IFB's detailed guidelines for the conduct of such investigations. The contracting officer also has not explained why the written procedures submitted by Metro, Skyline and Bradford were not acceptable and the reason is not apparent from our comparison of the Skyline and Davis procedures.

We believe the contracting officer erred in rejecting the bids as "nonresponsive" because of a perceived inadequacy in the written procedures. "Responsiveness" concerns whether a bidder has unequivocally offered to provide supplies or services in conformity with the material terms and conditions of the solicitation; "responsibility" refers to the bidder's apparent ability and capacity to perform all of the contract requirements. J. Baranello & Sons, 58 Comp. Gen. 509 (1979), 79-1 CPD 322. Information necessary to ascertain the ability and capacity of the bidders may be requested and used to determine the responsibility of the bidders, but, as a general rule, material relating to responsibility, even though required to be submitted with the bids, cannot be treated as a matter of responsiveness. Thermal Control, Inc., B-190906, March 30, 1978, 78-1 CPD 252; Action Manufacturing Company, B-208205.2, December 13, 1982, 82-2 CPD 526.

In our view, the requirement for the written procedures pertained to bidder responsibility, not to bid responsiveness. The IFB provided that the contractor would furnish reports concerning the assets and financial status of individuals and stated that if "the contractor is unable to

obtain required information through standard procedures, street investigations shall be used for personal contacts." (Emphasis added.) Thus, upon acceptance of the bid, the bidder would be legally committed to pursue street investigations. The written description of how bidders would do that did not affect their legal obligation to do so, which would involve bid responsiveness; rather, the description could only reasonably be used for measuring how the bidders intended to perform that task and not whether they would perform it. Thus, as indicated, evaluation of the written procedures involved only bidder responsibility.

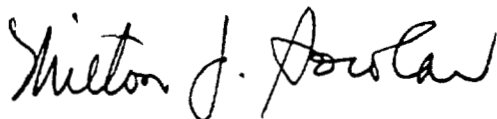
Since the requirement for the detailed written procedures concerned a matter of responsibility, the rejections of Metro's, Skyline's, and Bradford's bids because of the perceived inadequacy of their written procedures were in effect negative determinations of responsibility. Each of these bidders is a small business concern. The matter of the responsibility of the low bidder, Metro, therefore, should have been referred to the Small Business Administration (SBA) for consideration in connection with its Certificate of Competency (COC) procedures. This referral is required by 15 U.S.C. § 637(b)(7) (Supp. IV 1980) and Federal Procurement Regulations (FPR) § 1-1.708-2 (1964 ed. amend. 192). The SBA is empowered to certify conclusively to Government procurement officials with respect to all matters of responsibility of small businesses. Fred Craner, B-207988, July 12, 1982, 82-2 CPD 45. If the SBA refused to grant Metro a COC, the responsibility of Skyline should have been so referred. If both Metro and Skyline were denied a COC, the tie existing between Bradford and Davis should have been resolved in accordance with FPR § 1-2.407-6 and reports submitted in accordance with FPR Subpart 1-1.16 entitled "Reports of Identical Bids."

It appears that Metro's and Bradford's bids have expired and those firms have not participated in this protest as interested parties. In effect, Metro and Bradford have acquiesced in the rejection of their bids, which the VA need not consider further in taking corrective action. Skyline, in contrast, through its action in protesting the VA's rejection of its bid, has tolled the acceptance period of its bid pending resolution of its protest. 50 Comp. Gen. 357 (1970).

We therefore recommend that if Skyline's responsibility is still questioned, the matter now be referred to the SBA for possible issuance of a COC. If Skyline is denied a COC, no further action is required. If Skyline receives a COC, the contract with Davis should be terminated for the convenience of the Government and a contract for the remaining portion of the terminated contract awarded to Skyline. See Angelo Warehouses Co., B-196780, March 28, 1980, 80-1 CPD 228.

The protest is sustained.

This decision contains a recommendation for corrective action to be taken. Therefore, we are furnishing copies to the Senate Committees on Governmental Affairs and Appropriations and the House Committees on Government Operations and Appropriations in accordance with section 236 of the Legislative Reorganization Act of 1970, 31 U.S.C. § 720 (formerly 31 U.S.C. § 1176 (1976)), which requires the submission of written statements by the agency to the committees concerning the action taken with respect to our recommendation.

for 
Comptroller General
of the United States